

RESOLUTION NO. 2011-71

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO A LEASE AGREEMENT WITH NORFOLK SOUTHERN RAILWAY CORPORATION FOR THE LEASE OF VACANT LAND LOCATED NORTH OF DETROIT AVENUE AND EAST OF W. 110TH STREET FOR CONSTRUCTION STAGING FOR THE S-CURVE REHABILITATION PROJECT FOR A TERM OF ONE (1) YEAR

WHEREAS, the Greater Cleveland Regional Transit Authority will need land for construction staging for the S-Curve Rehabilitation Project; and

WHEREAS, the Norfolk Southern Railway Corporation owns approximately 5.48 acres of vacant land in the City of Cleveland that is north of Detroit Avenue, south of Norfolk Southern railroad tracks, east of W. 110th Street, and west of Norfolk Southern railroad tracks, which is identified by Cuyahoga County as permanent parcel number 001-32-005; and

WHEREAS, Norfolk Southern Railway Corporation has agreed to lease said land to the Authority for construction staging.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the Lease Agreement with Norfolk Southern Railway Corporation for use of the property identified above shall have a term of one (1) year.

Section 2. That the base rent is Four Thousand Two Hundred Dollars (\$4,200.00) per month plus an additional Five Hundred Dollar (\$500.00) non-refundable administrative fee for a total lease amount of Fifty Thousand Nine Hundred Dollars (\$50,900.00).

Section 3. That the Authority will be responsible for maintenance of the leased premises in accordance with the lease terms.

Section 4. That the General Manager/Secretary-Treasurer be, and is hereby authorized to enter into the Lease Agreement with Norfolk Southern Railway Corporation for use of the property identified above in substantially the form of Attachment A hereto.

Section 5. That said lease payments shall be made from the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to Capital Grant OH-05-0101, in the amount of \$50,900.00 (\$40,720.00 in Federal funds which represents 80% of the total cost).

Section 6. That this resolution shall become effective immediately upon its adoption.


Attachments: Lease Agreement with map

Adopted: August 2, 2011



President

Attest:



CEO, General Manager/Secretary-Treasurer

LEASE AGREEMENT

THIS LEASE is made as of the 1st day of April, 2011 by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (the "Landlord") and **THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**, an Ohio government entity (the "Tenant").

1. Premises; Use. For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, insofar as its right, title and interest in the Premises enables it to do so, that certain real property located at Milepost **B 188.80** in **Cleveland, Cuyahoga County, Ohio**, having an area of **5.48 acres**, more or less, the location and dimensions of which are substantially shown on print of Drawing No. 1147358 dated May 5, 2010, hereunto annexed as **Exhibit "A"** attached hereto (the "**Land**"), together with all improvements thereon (the "**Improvements**"). The Land and the Improvements are collectively referred to herein as the "**Premises**". This Lease is subject to all encumbrances, easements, conditions, covenants and restrictions of record or apparent by a visual inspection of the Premises. See Rider. §1.

The Premises shall be used as a lay down and work area for the West 110th Street Property S-Curve Project and no other purpose. The Premises shall not be used for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises. Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed (individually and collectively "Improvements") so long as they do not obstruct or interfere with Tenant's use of the Premises. Landlord further reserves unto itself and its permittees the right to enter upon the Premises at any and all times for the purposes of making Improvements or operating, maintaining, constructing or relocating any trackage, or railroad facilities located on, or in the vicinity of, the Premises provided that Landlord coordinates with Tenant in advance to avoid obstruction or interference with Tenant's use of the Premises.

The terms and conditions of the Rider, if any, attached hereto as **Exhibit "B"** are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Rider, the terms of the Rider shall prevail.

2. Term. To have and to hold for a term of 1 year, said term to begin on April 1, 2012, and to end at midnight on March 31, 2013, (the "**Initial Term**"), unless sooner terminated as hereinafter provided.

3. Base Rental. Commencing on April 1, 2012, (the "**Rental Commencement Date**") and thereafter on or before the first day of each succeeding month during the remaining term of this Lease, Tenant shall pay to Landlord, in advance, without offset, abatement or demand, base rental for the Premises in the initial amount of **FOUR THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$4,200.00)**.

Except in the event of default, base rental for any partial rental periods shall be prorated. The acceptance by Landlord of base rental shall not constitute a waiver of any of Landlord's rights or remedies under this Lease. All payments of base rental, and any additional rental payable hereunder, shall be sent to the Treasurer of Landlord at P.O. Box 116944, Atlanta, Georgia 30368-6944, or such other address as

Landlord may designate in any invoice delivered to Tenant. Prior to or simultaneously with Tenant's execution of this Lease, Tenant has paid to Landlord (a) a non-refundable, administrative fee in the amount of \$500.00, and (b) the first installment of base rental due hereunder. In the event Tenant fails to pay base rental or any other payment called for under this Lease on or before the due date, Tenant shall pay a late charge equal to five percent (5%) of the unpaid amount.

4. Utilities. Landlord shall have no obligation to provide light, water, heat, air conditioning or any other utilities or services to the Premises. Tenant shall place any and all utility and service related bills in its name and shall timely pay the same, along with all assessments or other governmental fees or charges pertaining to the Premises. If Tenant does not pay same, Landlord may (but shall not be obligated to) pay the same, including any and all late fees and penalties, and such payment shall be added to and treated as additional rental of the Premises.

5. Maintenance and Repairs. Tenant, at its sole cost, shall keep and maintain all of the Premises (including, but not limited to, all structural and non-structural components thereof and all systems) in good order and repair. Tenant hereby waives: (a) any rights at law or in equity to require Landlord to perform any repair, replacement or maintenance to the Premises, and (b) any right to abate rental or terminate this Lease due to the failure by Landlord to perform any repairs, replacements or maintenance unless the repairs, replacements or maintenance are necessary to remove obstructions or interference with Tenant's use of the Premises caused by or related to Landlord's and/or its permittees' performance of activities permitted under Paragraph 1. Tenant shall not create any lien, charge or encumbrance upon the Premises, and Tenant shall promptly remove or bond over any such lien, charge or encumbrance.

6. Modifications and Alterations to the Premises. Tenant shall make no modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, codes, regulations and ordinances and by contractors approved by Landlord. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant shall become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any improvements or repair any alterations in order to restore the Premises to the condition existing at the time Tenant took possession, reasonable wear and tear excepted. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a workmanlike manner. See Rider, ¶2.

7. Return of Premises. Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease in the same condition and repair as when first received, normal wear and tear excepted. Tenant agrees to remove its moveable equipment and trade fixtures from the Premises at the expiration or prior termination of this Lease. Tenant shall immediately repair any damage arising out of any such removal in a manner acceptable to Landlord. Failure to comply with this Paragraph 7 will constitute holding over by Tenant.

8. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, rental shall be prorated and paid up to the date of such casualty.

9. Indemnity. Except to the extent damage is caused solely by Landlord's fault, negligence or intentional misconduct Tenant agrees to save harmless Landlord and cause Tenant's contractors to indemnify, defend and save harmless Landlord, Landlord's parent companies, subsidiaries, affiliates, lessors, licensors, and subsidiaries of parent companies (collectively the "**Landlord Related Entities**") and Landlord's and Landlord's Related Entities' officers, directors, members, shareholders, lenders, agents and employees (collectively the "**Landlord Entities**") against all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, costs, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorney's fees and costs) to whomsoever, including, but not limited to, Tenant's agents, workmen, servants or employees, or whatsoever occurring (collectively, "**Claims**") arising out of or relating to Tenant's contractors' use or occupancy of the Premises. To the fullest extent permitted by applicable laws, except to the extent attributable to the fault, negligence or intentional misconduct of Landlord, Tenant hereby waives and releases the Landlord Entities from any Claims (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the Tenant's use or occupancy of the Premises. See Rider, ¶3.

10. Governmental Orders. Tenant agrees, at its own expense, to comply with all laws, orders, regulations, ordinances or restrictions applicable to Tenant or its contractors by reason of Tenant's use or occupancy of the Premises or operation of its business.

11. Condemnation. If the Premises or such portion thereof as will make the Premises unusable for the purpose herein leased shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then this Lease shall terminate as of the date of such condemnation or sale, and rental shall be accounted for between Landlord and Tenant as of such date. All condemnation awards beyond those related to Tenant's lease rights shall belong to Landlord; provided, however, and to the extent permitted under applicable law, Tenant shall be entitled to file a separate claim against the condemning authority for loss of its personal property and moving expenses.

12. Assignment. Tenant may not assign this Lease or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant or the transfer of a lesser percentage which results in a transfer of control of Tenant (WHICH INCLUDES, WITHOUT LIMITATION, TRANSACTIONS IN WHICH TENANT SELLS ITS BUSINESS, SELLS ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ITS BUSINESS OR MERGES OR CONSOLIDATES WITH ANOTHER ENTITY), whether in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Lease. All requests for an assignment or sublease shall be accompanied by a copy of the proposed assignment or sublease agreement and an administrative fee in the amount of \$750.00. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder. No such assignment or sublease nor any subsequent amendment of the Lease shall release Tenant or any guarantor of Tenant's obligations hereunder. If any such subtenant or assignee pays rental in excess of the rental due hereunder or if Tenant receives any other consideration on account of any such assignment or sublease, Tenant shall pay to Landlord, as additional rent, one-half of such excess rental or other consideration upon the receipt thereof. Any assignment or sublease made in violation of this Paragraph 12 shall be void and shall constitute a default hereunder.

13. Environmental. Tenant covenants that neither Tenant, nor any of its agents, employees, contractors or invitees shall cause or permit any aboveground or underground storage tanks or associated piping (collectively "**Tanks**") to be located on or under the Premises or any Hazardous Materials (as hereinafter defined) to be stored, handled, treated, released or brought upon or disposed of on the

Premises. In its use and occupancy of the Premises, Tenant shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety (collectively “**Environmental Laws**”). Tenant shall require that its agents, employees, contractors or invitees shall not under any circumstance dispose of trash, debris or wastes on the Premises and will not conduct any activities on the Premises which require a hazardous waste treatment, storage or disposal permit. As used herein, the term “**Hazardous Materials**” means asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 6901 *et seq.* (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 *et seq.* Tenant shall require that its contractors indemnify, defend and hold the Landlord Entities harmless from and against any and all claims, judgments, damages, penalties, fines, costs (including without limitation, consultant’s fees, experts’ fees, attorney’s fees, investigation and cleanup costs and courts costs), liabilities or losses resulting from the contractors’ (1) storage, handling, treatment, release, disposal, presence or use of Hazardous Materials in, on or about the Premises from and after the date of this Lease or (2) violation of any provision of any Environmental Laws. Without limiting the generality of the foregoing indemnity, in the event Landlord has reason to believe that the covenants set forth in this Paragraph 13 have been violated by Tenant’s contractors, Landlord shall be entitled, at Tenant’s contractors’ sole expense, to take such actions as Landlord deems necessary in order to assess, contain, delineate and/or remediate any condition created by such violation. Any sums expended by Landlord shall be reimbursed by Tenant’s contractors, within thirty (30) days after demand therefor by Landlord. Landlord has the right to enter the Premises at all reasonable times for purposes of inspecting the Premises in order to evaluate Tenant’s contractors’ compliance with the covenants of this Paragraph 13. In the event Tenant delivers or receives any notices or materials from any governmental or quasi-governmental entity and such notices or materials relate to Tanks or Hazardous Materials in, on or about the Premises, Tenant shall immediately send to Landlord a copy of such notices or materials. Tenant shall also provide Landlord with a detailed report relating to any release of a Hazardous Material in, on or about the Premises whenever such release is required to be reported to governmental authorities pursuant to the Environmental Laws. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to cause to be performed such environmental studies of the Premises by an environmental consultant as are necessary to determine whether any Hazardous Materials have been stored, handled, treated, released, brought upon or disposed of on the Premises during the term of this Lease in violation of the terms hereof. If any such study reveals any violation of this Lease, Tenant’s contractors shall promptly reimburse Landlord for the costs of such studies and Tenant’s contractors shall immediately undertake a further investigation, if necessary, and remediation of such contamination. Landlord may undertake such investigation and remediation if Tenant’s contractors fail to do so within a reasonable time frame, in which case Tenant’s contractors shall promptly reimburse Landlord for the cost of same within thirty (30) days after demand therefore by Landlord. The obligations of this Paragraph 13 shall survive the expiration or earlier termination of this Lease. See Rider, ¶4.

14. Default; Remedies. In the event (i) any payment of rental or other sum due hereunder is not paid within ten (10) days after the due date thereof; (ii) the Premises shall be deserted or vacated; (iii) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than an obligation requiring the payment of rental or other sums hereunder, and shall not cure such failure within twenty (20) days after notice to the Tenant of such failure to comply; (iv) Tenant shall attempt to violate or violate Paragraph 12 above; or (v) Tenant or any guarantor shall file a petition under any applicable federal or state bankruptcy or insolvency law or have any involuntary petition filed thereunder against it,

then Landlord, in addition to any remedy available at law or in equity, shall have the option to do any one or more of the following:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord.

(b) Without terminating this Lease, terminate Tenant's right of possession, whereupon rental shall continue to accrue and be owed by Tenant hereunder. Thereafter, at Landlord's option, Landlord may enter upon and relet all or a portion of the Premises (or relet the Premises together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to Landlord. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rental hereunder and all net sums received by Landlord on account of such reletting (after deducting all costs incurred by Landlord in connection with any such reletting, including without limitation, tenant improvement costs, brokerage commissions and attorney's fees).

(c) Pursue a dispossessory, eviction or other similar action against Tenant, in which event Tenant shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued.

(d) Perform any unperformed obligation of Tenant, including, but not limited to, cleaning up any trash, debris or property remaining in or about the Premises upon the expiration or earlier termination of this Lease. Any sums expended by Landlord shall be repaid by Tenant, as additional rent, within ten (10) days after demand therefor by Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies available at law or in equity. Acceptance of rental or any other sums paid by Tenant shall not constitute the waiver by Landlord of any of the terms of this Lease or any default by Tenant hereunder. If applicable law nevertheless requires Landlord to mitigate damages then (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises Landlord has available for leasing; (ii) Landlord shall not be obligated to expend any efforts or any monies beyond those Landlord would expend in the ordinary course of leasing space; and (iii) in evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider.

15. Signs; Entry by Landlord. Landlord may place "For Lease" signs upon the Premises one hundred twenty (120) days before the termination of this Lease and may place "For Sale" signs upon the Premises at any time. Landlord may enter the Premises with prior notice to Tenant at reasonable hours during the term of this Lease (a) to show the same to prospective purchasers or tenants, (b) to make repairs to Landlord's adjoining property, if any, (c) to inspect the Premises in order to evaluate Tenant's compliance with the covenants set forth in this Lease, or (d) to perform activities otherwise permitted or contemplated hereby.

16. No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; Tenant's interest is not assignable by Tenant except as provided in Paragraph 12, above.

17. Holding Over. If Tenant remains in possession of the Premises after expiration of the term hereof with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the base rental shall become 110% of the then

current base rental, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other. Tenant waives any right that it may have to additional notice pursuant to applicable law. If Tenant remains in possession of the Premises after the expiration of the term hereof without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay base rental at the rate of 150% of the then current base rental. In such circumstance, acceptance of base rental by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

18. Notices. Any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: The Greater Cleveland Regional Transit Authority, 1240 West 6th Street, Cleveland, Ohio 44113, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

19. Track Clearance. [Intentionally deleted]

20. Brokerage. Landlord and Tenant hereby covenant and agree to hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost and expense (including without limitation attorney's fees and litigation costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder claiming by, through or under the indemnifying party, whether or not such claim is valid.

21. Tenant's Insurance. Tenant and each of its contractors working at or about the Premises shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, Three Commercial Place, Norfolk, Virginia 23510, simultaneously with the execution of this Lease by Tenant.

The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant. See Rider, ¶5.

22. Taxes. Tenant agrees to reimburse Landlord, as additional rental, for all real estate taxes and assessments (regular or special) pertaining to the Premises ("Taxes") paid by Landlord with respect to the Premises on account of this Lease or Tenant's use of the Premises. Landlord may, but shall not be obligated to, invoice Tenant for the estimated Taxes for each calendar year (but no more frequently than monthly), which amount shall be adjusted each year based upon anticipated Taxes. If the Premises are part of a larger tract, the Taxes for which Tenant is responsible for reimbursing Landlord pursuant to the terms hereof shall be the share of such total Taxes that Landlord reasonably determines are applicable to the Premises, giving due consideration to the relative value of the Premises and the value of the land and improvements reflected in the applicable tax valuation. Upon request from Tenant, Landlord shall provide Tenant with copies of tax bills for the Taxes. If Landlord has been invoicing Tenant for Taxes and the tax bills indicate that the total of the payments made by Tenant exceeds the amount of Taxes applicable to the Premises, Landlord shall credit any such amount against the Tax reimbursement payment next coming due. In the event the accounting shows that the total of the Tax payments made by Tenant is less than the amount of Tax payment due from Tenant under this Paragraph, the accounting shall be accompanied by an invoice for the additional payment. During the year in which the Lease terminates, Landlord shall have the option to invoice Tenant for Taxes based upon the previous year's Taxes. If this Lease commences on a day other than the first day of a tax year or ends on a day other than the last day of a tax year, the amount of any Taxes payable by Tenant applicable to the year in which the term commences or ends shall be prorated. Tenant agrees to pay any sum due under this Paragraph within ten (10) days following receipt of the invoice showing the amount due.

23. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

24. No Warranties; Entire Agreement. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD. THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AS TO THE PREMISES, AND NO REPRESENTATIONS, INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES, NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT.

25. Survival. The provisions of Paragraphs 6, 7, 9, 13, 17, 20 and 22 shall survive the expiration or earlier termination of this Lease.

26. Miscellaneous. Knowledge on the part of Landlord or any employee, agent or representative of Landlord of any violation of any of the terms of this Lease by Tenant shall constitute neither negligence nor consent on the part of Landlord, and shall in no event relieve Tenant of any of the

responsibilities and obligations assumed by Tenant in this Lease. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. Subject to the terms of Paragraph 12 above, this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. Neither party shall be bound hereunder until such time as both parties have signed this Lease. This Lease shall be governed by the laws of the State of Ohio.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness:

Signature
Name: _____

Witness:

Signature
Name: _____

Witness:

Signature
Name: _____

Witness:

Signature
Name: _____

1147658/ 758906v2

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: _____
Name: _____
Title: _____

Date of Landlord Signature: _____

[SEAL]

TENANT:

THE GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY
an Ohio government entity

By: _____
Name: _____
Title: _____

Date of Tenant Signature: _____

[SEAL]

Approved as to legal form and correctness:

Sheryl King Benford, General Counsel, Deputy
General Manager for Legal Affairs

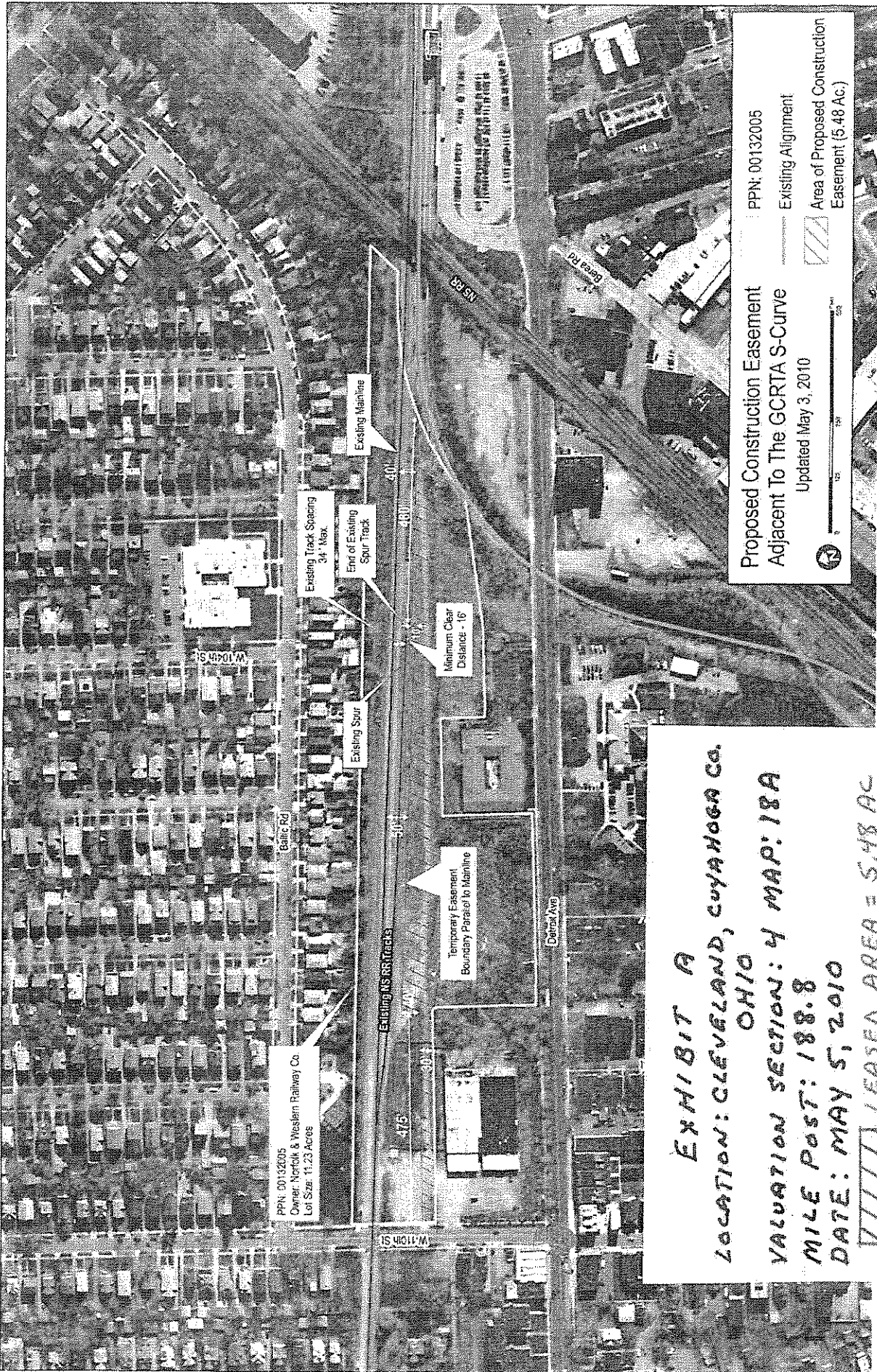


EXHIBIT A
LOCATION: CLEVELAND, CUYAHOGA CO. OHIO
VALUATION SECTION: 4 MAP: 18A
MILE POST: 188.8
DATE: MAY 5, 2010
 LEASED AREA = 5.48 AC
 MORE OR
 LESS

EXHIBIT B

RIDER TO LEASE AGREEMENT BY AND BETWEEN THE NORFOLK SOUTHERN RAILWAY COMPANY, AS LANDLORD, AND THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, AS TENANT

This Rider is attached to and made a part of the referenced Lease Agreement. In the event of an inconsistency between the terms of this Rider and the terms of the Lease, the terms of this Rider shall control.

1. **Use of the Premises.** Tenant's authorized contractors shall be permitted to use the Premises in the manner described in Paragraph 1 and Paragraph 12 shall not apply to them so long as, prior to any entry upon the Premises, such contractors shall have obtained all insurance required pursuant to Paragraph 24 of the Lease. Contractor's insurance shall be primary and non-contributory for any and all claims arising out of their use of the Premises as regards any insurance or self-insurance carried by Tenant or Landlord.

2. **Installation of Fence.** Notwithstanding Paragraph 6 of the Lease, Tenant or its contractor shall be permitted, at its own expense, to erect and maintain a chain-link fence within the Premises to protect its The fence is to be constructed in accordance with specifications approved by Landlord prior to the erection of the fence.

3. **Indemnification of Landlord.** The parties acknowledge that Tenant is not permitted to indemnify Landlord under the laws of the State of Ohio.

4. **Environmental.** Notwithstanding anything to the contrary in Paragraph 13 of the Lease, Tenant shall not be liable or responsible for any contamination by pre-existing Hazardous Materials on, in or under the Premises, except to the extent such pre-existing environmental contamination is exacerbated by Tenant or its employees, contractors, agents or invitees.

5. **Tenant's Right to Self Insure.** The Greater Cleveland Regional Transit Authority shall have the right to self-insure for the insurance required in Paragraph 21 of the Lease, on the following terms and conditions:

(a) "Self-insure" shall mean that Tenant is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and Tenant shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Lease.

(b) All amounts which Tenant pays or is required to pay and all loss or damages resulting from risks for which Tenant has elected to self-insure shall be subject to the waiver of subrogation provisions of the Lease and shall not limit Tenant's indemnification obligations set forth in the Lease.

(c) In the event that Tenant elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, Tenant

shall:

use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Tenant to self-insure.

(d) The obligations of Tenant under this Paragraph 5 are independent and shall remain in full force and effect..

(e) In addition, the following modifications are made to Paragraph 21 of the Lease:

(1) The prohibition against deductibles in excess of \$5,000 is hereby deleted.

(2) Paragraph 21(c) shall apply only to Tenant's contractor as its insurance is intended to cover all liabilities arising from its use of the Premises.

(3) Tenant's liability insurance shall apply only to any other liabilities arising from the Lease.



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

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|---|--|---|
| TITLE/DESCRIPTION: | | Resolution No.: 2011-71 |
| CONTRACT: | LAND LEASE FOR CONSTRUCTION STAGING AREA FOR S-CURVE REHABILITATION PROJECT | Date: July 28, 2011 |
| VENDOR: | NORFOLK SOUTHERN RAILWAY CORPORATION | Initiator: Programming and Planning |
| AMOUNT: | \$50,900.00 | |
| ACTION REQUEST: | | |
| <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____ | | |

- 1.0 PURPOSE/SCOPE: This resolution authorizes GCRTA to lease approximately 5.48 acres of vacant land on the West side of Cleveland from Norfolk Southern Railway Corporation for a one-year term.
- 2.0 DESCRIPTION/JUSTIFICATION: GCRTA requires land for construction staging for the S-Curve Rehabilitation Project. Lease rate is based upon appraised value determined by appraiser hired by GCRTA. This lease grants GCRTA permission to use land adjacent to Norfolk Southern railroad tracks for material and equipment storage. Lease term commences April 1, 2012. Entering into the lease now will ensure control of the land so that project can move forward.
- 3.0 PROCUREMENT BACKGROUND: Not Applicable
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Not Applicable
- 5.0 POLICY IMPACT: This action is compliant with the Board of Trustees Real Estate Policy that specifies the Board of Trustees must approve all agreements in excess of \$25,000.
- 6.0 ECONOMIC IMPACT: Lease payments shall be made from the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to Capital Grant OH-05-0101, Line Item 12.76.91, in the amount of \$50,900.00 (\$40,720.00 in Federal funds which represents 80% of the total cost).
- 7.0 ALTERNATIVES: Alternative sites are available to lease but are less desirable due to greater distance from project site, smaller size, and/or need to relocate personal property prior to use of site. Use of an alternative site would therefore cost the Authority more money.
- 8.0 RECOMMENDATION: Staff recommends that the Board of Trustees approve the resolution to authorize leasing this property from Norfolk Southern Railway Corporation.
- 9.0 ATTACHMENTS: None

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.

CEO, General Manager/Secretary-Treasurer